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*Case No IV/M.293 -  
PHILIPS / THOMSON  
/ SAGEM*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(a) INAPPLICABILITY  
Date: 18.01.1993

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MERGER PROCEDURE  
ARTICLE 6(1)a DECISION

PUBLIC VERSION

Registered with advice of delivery

1. Notifying party
2. Notifying party
3. Notifying party

Dear Sirs,

Subject: Case No. IV/M.293 - Philips/Thomson/SAGEM  
Your notification of 8 December 1992 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 8 December 1992, Philips Electronics N.V., Thomson Consumer Electronics S.A. and SAGEM notified an agreement by which they will create a joint venture company called Flat Panel Display Co. B.V. ("FPD") which will be active in the development, design, manufacture and sale of active matrix liquid crystal displays ("AM-LCD").
2. After examination of the notification, the Commission has concluded that the notified operation does not fall within the scope of Council Regulation No. 4064/89.

I. THE PARTIES AND THE AGREEMENT

3. Philips Electronics N.V. ("Philips") is one of the major electronics companies in the world. Its activities include lighting, consumer electronics, electronic components, communications systems and domestic appliances.
4. Thomson Consumer Electronics S.A. ("TCE") is a subsidiary of Thomson S.A. whose activities include consumer electronics, professional broadcast products and tubes and display components.

5. SAGEM is a French company which manufactures a wide range of products in the professional electronics and electromechanics area.
6. The joint venture agreement signed by Philips, TCE and SAGEM on 25 November 1992 concerns the creation of a joint venture which will manufacture and sell AM-LCD display components for direct view TV modules (portable TVs, games, automotive dashboard panels, videophones, etc), consumer and professional projection displays and datagraphic modules (notebooks, laptops and portable workstations). Philips will transfer to FPD all its activities related to the AM-LCD technology. In early 1993, Philips will sell to each of the other parties a 10% stake in the joint venture and will retain an 80% shareholding.

## II. COMMUNITY DIMENSION

7. The operation has a Community dimension. The worldwide turnover of all the undertakings concerned, in their respective last financial years, amounts to more than 5,000 million ECU. The Community-wide turnover of each of Philips, Thomson and SAGEM exceeds 250 million ECU and the undertakings concerned do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

## III. CONCENTRATION

### Joint control

8. The company will be managed by a chief executive officer (CEO) who will head a management team, and there will be a board of directors which will be subject to the directives of a policy committee (PC) which will supervise the joint venture.
9. The Joint Venture Agreement provides for the establishment of the PC. Each shareholder with at least 10% of the shares will appoint a representative who will have voting rights in proportion to its shareholding. As a result, Philips, TCE and Sagem representatives will, respectively have 80%, 10% and 10% of the voting rights in the PC.
10. Any decisions of the CEO and the board in respect of fundamental issues affecting FPD require the prior approval by a majority of more than 80% in the PC. These fundamental issues include the issue of new shares; any change in the scope or activity of the joint venture; any acquisition, merger, reorganisation or dissolution of the joint venture or any of its subsidiaries; establishment of subsidiaries; investments or disinvestments; conclusion of material contracts out of the ordinary business; acquisition, disposal or licensing of industrial or intellectual property rights. Moreover, approval of an annual, detailed business plan and expenditures in excess of 10% of any item contained in the approved current business plan are fundamental issues in the meaning of the Joint Venture Agreement. The appointment and dismissal of members of the board and management team (other than the appointment or dismissal of the CEO) have also to be agreed by a majority of more than 80%.
11. As a result of the above, major strategic decisions concerning the joint venture will require the prior approval of Philips plus either TCE or Sagem.

It follows that FPD will be an undertaking jointly controlled within the meaning of the Merger Regulation<sup>(1)</sup>.

#### Full function joint venture

12. The joint venture presents all the formal characteristics of a full function business undertaking. It will be a separate legal entity which will have its own plant, equipment, properties and business contracts related to its activities transferred from Philips. Philips will also transfer to the joint venture all personnel currently employed in development, manufacturing, marketing and sales departments in the activities related to the scope of FPD. The joint venture will also acquire from Philips exclusive licensing rights related to know-how with regard to the products to be manufactured and will also be able to develop its own process and product development activities as well as entering into European wide R&D projects such as ECAM or acquire know-how from third parties under licensing agreements. Nevertheless, the parties will continue to carry out the research and development applicable to manufacturing AM-LCD displays.
13. All the parent companies are potential clients of the joint venture and the agreement states that priority shall be given to serving the supply requirements of the parties. The parent companies will have the right to purchase part of the output of FPD up to the same percentage as the percentage of their shareholding under preferential treatment as regards the pricing of the products. At the present time, the parties are absent from the main downstream market - the portable PC market - and therefore they do not expect to purchase more than 30% of FPD's output.
14. However, in the context of a joint venture established primarily to meet the requirements of its parent companies, the possibility remains that FPD will supply a larger part of its output to its parent companies. In the light of the high degree of supply side substitutability between the products produced by FPD, the above mentioned possibility is underlined by the right given to the parties by the joint venture agreement to purchase all the output of FPD at preferential prices. Consequently, the autonomy of the joint venture could be called into question. However, it is not necessary to consider the matter further in view of the co-ordination of competitive behaviour which is discussed in the following section.

#### Risk of co-ordination of competitive behaviour

15. Display components are the second largest electronic components market after integrated circuits. Cathode ray tubes ("CRTs") are currently the dominant display components technology but the general tendency towards portable use of all kinds of equipment for entertainment, communication and information as well as the development of applications where space is restricted such as automotive, avionics and possibly desk top PCs and the development of HDTV, has led to the launch of several flat panel alternatives. These alternatives are principally AC and DC plasma technology, electroluminescence, microtip display and deformable mirrors. For the time being, only DC plasma technology seems to be a commercially viable alternative to AM-LCDs for replacing CRTs in the field of some computer screens. With regard

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<sup>(1)</sup> See decision in case no. IV/M.239 - Avesta/British Steel/NEC/AGA/Axel Johnson.

to HDTV, DC plasma technology, microtip display and electroluminescence seem to be able to meet the HDTV technical requirements although no commercial application has taken place to date.

16. AM-LCDs are generally regarded as one of the most promising flat panel alternatives and the only one in commercial production in the TV field. Most AM-LCDs are currently supplied by Japanese companies and this is not expected to change in the foreseeable future. Apart from the joint venture, which will start mass production in 1993, the parties expect that there will be mass production in Taiwan and Korea in the next few years. A production start in the USA is unclear.
17. Philips and Thomson are major worldwide manufacturers of CRTs. The notifying parties agree that CRTs on the one hand and all flat panel display products (including AM-LCDs) on the other hand belong to the category of display components and that AM-LCDs may partially replace CRTs in some segments of the market in the future. Nevertheless, they consider that each technology presents its own characteristics, strengths, weaknesses, costs and areas of application and, therefore, cannot be considered as belonging to the same product market.
18. The Thomson group is involved in research in plasma screens. Moreover, Thomson is engaged in the commercial production of plasma screens for military uses. Although Thomson cannot currently use these technologies without transformation for civilian applications, they will remain an important player in the display system field with access to this research. Consequently, in view of the uncertainties surrounding future technological developments in the display components sector, Thomson has to be considered as a potential competitor of the joint venture in the long term.
19. Although AM-LCDs allow the development of new products such as pocket-sized TVs, they are also expected to replace some existing TV and computer applications of CRTs, as confirmed by the parties. As the price of AM-LCDs falls, the replacement process, which is still subject to technological developments, will mean that AM-LCDs will be competing with existing display technologies where the parties are important players<sup>(1)</sup>. In the former case, even if there are separate new product markets, there will nevertheless be a degree of interdependence between the new and the existing display technologies. It follows that two of the parent companies and the joint venture will be active in the same market and/or in closely related markets and as a result it is reasonably foreseeable that their competitive behaviour will be co-ordinated.

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<sup>(1)</sup> See the definition of the relevant market adopted in Article 3(2) of Commission Regulation (EEC) No. 418/85 on the application of Article 85(3) to categories of research and development agreements.

For the above reasons, the Commission has decided that the notified agreement does not constitute a concentration within the meaning of Article 3 of the Merger Regulation and thus does not fall within the scope of the Regulation. This decision is adopted pursuant to Article 6(1)(a) of the Merger Regulation.

The Commission will treat the notification pursuant to Article 5 of Commission Regulation No. 2367/90 as an application within the meaning of Article 2 or a notification within the meaning of Article 4 of Council Regulation No. 17/62 as requested by the parties in their notification.

For the Commission